

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

L.E., by his next friends and
parents, SHELLEY ESQUIVEL and
MARIO ESQUIVEL

Plaintiff

v.

No.

BILL LEE, in his official

3:21-cv-00835

capacity as Governor of

Tennessee; PENNY SCHWINN, in her

official capacity as the

Tennessee Education

Commissioner; TENNESSEE STATE

BOARD OF EDUCATION; SARA HEYBURN

MORRISON, in her official

capacity as the Executive

Director of the Tennessee State

Board of Education; NICK

DARNELL, MIKE EDWARDS, ROBERT

EBY, GORDON FERGUSON, ELISSA

KIM, LILIAN HARTGROVE, NATE

1 MORROW, LARRY JENSEN, DARRELL
2 COBBINS, and EMILY HOUSE, the
3 individual members of the
4 Tennessee State Board of
5 Education, in their official
6 capacities; KNOX COUNTY BOARD OF
7 EDUCATION a/k/a KNOX COUNTY
8 SCHOOLS a/k/a KNOX COUNTY SCHOOL
9 DISTRICT; ROBERT M. "BOB"
10 THOMAS, in his official capacity
11 as Director of Knox County
12 Schools

13 Defendants

14 -----

15 VIDEOCONFERENCE DEPOSITION OF

16 JONATHAN FRANKLIN HIGGINS

17 DATE: Monday, July 25, 2022

18 TIME: 11:15 a.m.

19 LOCATION: Remote Proceeding

20 Washington, D.C. 20005

21 REPORTED BY: Janel B. Folsom, Notary Public

22 JOB NO.: 5338660

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., BY HIS NEXT FRIENDS AND
PARENTS, SHELLEY ESQUIVEL AND MARIO ESQUIVEL:

JOHN W. O'TOOLE, ESQUIRE (by videoconference)

WilmerHale LLP

1875 Pennsylvania Avenue Northwest

Washington, D.C. 20001-3642

john.o'toole@wilmerhale.com

(202) 663-6256

ON BEHALF OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION
A/K/A KNOX COUNTY SCHOOLS A/K/A KNOX COUNTY SCHOOL
DISTRICT AND ROBERT M. "BOB" THOMAS, IN HIS CAPACITY
AS DIRECTOR OF KNOX COUNTY SCHOOLS:

JESSICA G. A. JERNIGAN-JOHNSON, ESQUIRE (by
videoconference)

Knox County Law Director's Office

400 Main Street, Suite 612

Knoxville, Tennessee 37902-2495

jessica.johnson@knoxcounty.org

(865) 215-2327

A P P E A R A N C E S (Cont'd)

ON BEHALF OF DEFENDANTS BILL LEE, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF TENNESSEE; PENNY SCHWINN, IN
HER OFFICIAL CAPACITY AS THE TENNESSEE EDUCATION
COMMISSIONER; TENNESSEE STATE BOARD OF EDUCATION; SARA
HEYBURN MORRISON, IN HER CAPACITY AS THE EXECUTIVE
DIRECTOR OF THE TENNESSEE BOARD OF EDUCATION; AND NICK
DARNELL, MIKE EDWARDS, ROBERT EBY, GORDON FERGUSON,
ELISSA KIM, LILLIAN HARTGROVE, NATE MORROW, LARRY
JENSEN, DARRELL COBBINS, AND EMILY HOUSE, THE
INDIVIDUAL MEMBERS OF THE TENNESSEE STATE BOARD OF
EDUCATION, IN THEIR OFFICIAL CAPACITIES:

STEPHANIE A. BERGMEYER, ESQUIRE (by
videoconference)
Office of Tennessee Attorney General
315 Deaderick Street, 20th Floor
Nashville, Tennessee 37243-0001
stephanie.bergmeyer@ag.tn.gov
(615) 741-6828

A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Sasha Buchert, Esq., Lambda Legal Defense and
Education Fund Inc. (by videoconference)

Thomas F. Costello-Vega, Esq., WilmerHale, LLP
(by videoconference)

Clark L. Hildabrand, Esq., Office of Tennessee
Attorney General (by videoconference)

Brandon Townsend, Office of Tennessee Attorney
General (by videoconference)

Jerry Curran, Technician, CMI Production Services
(by videoconference)

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P R O C E E D I N G S

THE REPORTER: Good morning. My name's Janel Folsom; I'm the reporter assigned by Veritext to take the record of this deposition. We are now on the record at 11:15 a.m. Eastern Daylight Time, Monday, July 25, 2022.

This is the deposition of Jon Higgins taken in the matter of L.E., by his next friends and parents, Shelley Esquivel and Mario Esquivel vs. Bill Lee, et al. Case no. 3:21-cv-00835 and this case is filed in U.S. District Court, Middle District of Tennessee, Nashville Division. We are all participating via a Zoom videoconference.

And I'm a notary authorized to take acknowledgements and administer oaths in the Commonwealth of Virginia. Parties agree that I will swear the witness remotely, outside of his presence.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording virtually of this proceeding:

1 - is intended for all uses permitted
2 under applicable procedural and
3 evidentiary rules and laws in the same
4 manner as a deposition recorded by
5 stenographic means; and
6 - shall constitute written stipulation
7 of such.

8 At this time will all the attorneys in
9 attendance please introduce yourself for the record.
10 Mr. O'Toole, you can go first.

11 MR. O'TOOLE: Sure. John O'Toole of
12 WilmerHale, counsel for Plaintiff. I'm joined by my
13 colleague Thomas Costello-Vega also of WilmerHale and
14 Sasha Buchert of Lambda Legal.

15 THE REPORTER: Okay. Let's see. Go
16 ahead, Stephanie.

17 MS. BERGMAYER: Stephanie Bergmeyer
18 with the Tennessee Attorney General's Office. And
19 with me are Clark Hildabrand and our intern Brandon
20 Townsend.

21 THE REPORTER: Your mic is not working
22 great.

1 All right, Mr. Higgins. If you'd just
2 raise your right hand, I'll swear you in.

3 WHEREUPON,

4 JONATHAN FRANKLIN HIGGINS,
5 called as a witness, and having been first duly sworn
6 to tell the truth, the whole truth, and nothing but
7 the truth, was examined and testified as follows:

8 THE REPORTER: Okay.

9 You guys can begin.

10 EXAMINATION

11 BY MR. O'TOOLE:

12 Q Good morning, Mr. Higgins. My name is --

13 A Yeah.

14 Q -- John O'Toole and I'll be the lead
15 attorney questioning you today. Thank you for being
16 here. I know it's a hot summer day and you'd probably
17 rather be doing something else than being deposed in
18 this case. So thank you.

19 Would you first mind stating and spelling
20 your full name for the record?

21 A It's Jonathan, J-O-N-A-T-H-A-N, Franklin,
22 F-R-A-N-K-L-I-N, Higgins, H-I-G-G-I-N-S.

1 A Yes, sir.

2 Q And as you said, you're the only golf coach
3 at Farragut High School currently, right?

4 A Yes, sir. I've got a volunteer helping me
5 right now, while I'm on vacation.

6 Q Okay. What are your responsibilities as the
7 golf coach?

8 A To set up practices, conduct practices, set
9 up matches, and give lineups for matches, and oversee
10 matches and district tournament and region tournament.

11 Q Okay. Sounds like a lot to do alone. And
12 does Farragut High School have a junior varsity golf
13 team?

14 A The golf season is tricky. So we don't
15 technically have a junior varsity team, but if we
16 needed to play a JV match or two, we probably could.

17 Q What do you mean that the season is tricky?

18 A You get 14 dates to play golf matches. And
19 in -- in those 14 days are included are JV matches.
20 So most teams don't have JV matches.

21 We don't play JV matches 'cause they have to
22 played on the same day and most teams don't have two

1 A Yes.

2 Q Okay. Do the Farragut High School boys'
3 golf team and girls' golf team regularly practice and
4 play together?

5 A Yes.

6 Q Okay. And are they allowed to because
7 there's less concern about injury of students on the
8 golf teams playing together?

9 MS. JERNIGAN-JOHNSON: Object to the
10 form.

11 A I don't understand the question.

12 Q Sure. So any concern that a student might
13 injure themselves during a particular match does not
14 bar the Farragut High School boys' golf team and the
15 Farragut High School girls' golf team from playing
16 together, correct?

17 A No.

18 Q Mr. Higgins, in your coaching career, to
19 your knowledge, have you ever coached a transgender
20 student?

21 A No.

22 Q Okay. In your career, have you ever had

1 direct interaction with a transgender person?

2 A In regards to sports?

3 Q Sure, we could start there.

4 A No.

5 Q No. But otherwise?

6 A Yes.

7 Q And what was the context of that?

8 A A teacher, student, just people in the
9 community.

10 Q Okay. When I refer to Plaintiff in this
11 matter, I'm going to refer to him as L.E.; is that
12 okay with you?

13 A Yes.

14 Q Before today, did you know who L.E. was?

15 A Yes; I know of him, yes.

16 Q Have you spoken directly to L.E.?

17 A Not that I'm aware of, no.

18 Q Okay. Did you come to know L.E. outside the
19 context of this case?

20 A No.

21 Q When did you first become aware of L.E.?

22 A I read an article last fall I guess -- the

1 article in the paper last fall about a student who
2 tried to play golf that I had never met before.

3 Q Okay. Do you recall where you saw that
4 article?

5 A Maybe the Knox News -- the Sentinel maybe.
6 Or WBIR. I can't remember.

7 Q Okay. Have you ever spoken directly to
8 L.E.'s parents?

9 A No, sir.

10 Q So through that article that you read last
11 fall, did you become aware that L.E. enjoys playing
12 golf?

13 A I read it in the article, yes.

14 Q Okay. And what is your understanding of the
15 issues in this case?

16 A That he wants to play golf but can't. Let
17 me rephrase that.

18 But can't play for the team he wants to play
19 for.

20 Q Okay. Do you have an understanding of why
21 he alleges that he cannot play for the team that he
22 wants to?

1 A Yes.

2 Q And what's your understanding?

3 A That the law says he cannot.

4 Q Mr. Higgins, do you know how long has
5 Farragut High School had a golf team?

6 A I do not.

7 Q Okay. And so you don't know how long ago
8 the boys' team was established versus the girls' team?

9 A No, sir.

10 Q Okay. How many spots are on each of the
11 teams?

12 A There's no set number of spots.

13 Q Okay. So how do you determine how many
14 spots there will be a given season?

15 A Whoever qualifies to make the team at
16 tryouts.

17 Q Okay. So going into tryouts, there's no
18 fixed number of students --

19 A No --

20 Q -- make the team? Okay.

21 A No. I would like to have five boys and
22 three girls, 'cause that's what I need to play with.

1 Q And why do you need that to play with?

2 A That's the amount of kids you can play in a
3 match.

4 Q Okay. And is there a reason why there are
5 five boys and three girls needed for a match?

6 A That's what was set by TSSAA I guess.

7 Q Okay. So you don't determine that number of
8 five --

9 A No.

10 Q -- girls. Do you determine how many
11 students end up making the golf team?

12 A I'd like to say yes, but really their play
13 determines who makes the golf team.

14 Q Okay. Approximately how many students do
15 not make the team who try out?

16 A Not many. Two, three maybe.

17 Q Approximately how many students try out?

18 A Well this year, I've got 18 kids.

19 Q Okay. So theoretically, all 18 could make
20 the team; is that right?

21 A Yes.

22 Q Do the students who make either of the high

1 Q Got it. So you have too many students
2 wanting to play on the girls' golf team?

3 A And only because I can only play three at a
4 time.

5 Q Okay. Are there separate tryouts held for
6 the boys' team and girls' team?

7 A No.

8 Q So how many days are tryouts?

9 A I think this year we had them for three
10 days.

11 Q Okay. So here, if you look at bullet 2, it
12 says, "players trying out for the boys' team will need
13 to shoot an average score of 90 or better for 18
14 walking holes through 3 rounds."

15 A Yes.

16 Q Right? So when you say tryouts were over
17 three days, is that what is referenced here as three
18 rounds?

19 A Yes.

20 Q Okay. And are those three consecutive days?

21 A No.

22 Q What's the length of time between each

1 A Yes, sir.

2 Q Okay. So if I refer to it as that, you'll
3 understand what I mean?

4 A Yes.

5 Q Okay. What does the TSSAA do?

6 A I believe they're our governing body.

7 Q When you say, "our," what do you mean?

8 A Sports. High school sports. Secondary
9 sports.

10 Q Okay. So by governing body do you mean that
11 as a coach at a high school in Tennessee, you must
12 abide by their policies?

13 A Yes.

14 Q Okay. And Farragut High School is a member
15 of the TSSAA; is that right?

16 A Yes.

17 Q Are all Tennessee high schools members?

18 A No.

19 Q Okay. Do you know how one becomes a member?

20 A No.

21 Q Do you have any particular obligations that
22 you must meet -- let me rephrase that.

1 Q Is there a championship tournament each
2 school year?

3 A Yes.

4 Q And how does the team participate in that
5 tournament?

6 A As a team, you have to win your region
7 tournament. You take one team from the region to go
8 to state, but you can qualify as an individual to go
9 to state if your team doesn't make it.

10 Q How many teams participate in the state
11 championship tournament?

12 A Big school state tournament, I believe there
13 are eight teams. I think, yeah.

14 Q And is Farragut High School considered a big
15 school?

16 A Yes.

17 Q Has the Farragut High School boys' team ever
18 won the state championship tournament?

19 A Yes.

20 Q What year was that?

21 A 2020.

22 Q And did you come to the regional boys' golf

1 tournament last year?

2 A Yes.

3 Q And do you recall what the boys' team placed
4 in that tournament?

5 A Second.

6 Q And do you recall the top four scores of the
7 boys that played in that tournament?

8 A Mmm. No; not offhand, no. I can't give you
9 exact scores.

10 MS. BERGMEYER: I'm looking to upload a
11 document and it's not letting me click on that option.

12 THE TECH CONCIERGE: That's because you
13 probably didn't request -- you don't have the private
14 folder to put them in. That's why. You can e-mail it
15 to --

16 MS. BERGMEYER: Okay.

17 THE TECH CONCIERGE: -- you can e-mail
18 it to me and I could put it up here, but you can't.

19 MS. BERGMEYER: Okay. Or I could share
20 my screen? Is that right?

21 THE TECH CONCIERGE: You can do that
22 one as I give you permission to do that. Hold on a

1 second and I'll set that right now.

2 You can now share your screen, yes, but
3 if you want that document to be entered into the
4 record, you'll still need to get it to me or to the
5 court reporter so it can be put in with the marked
6 exhibits.

7 MS. BERGMEYER: Okay. Thank you. I'll
8 go ahead and share my screen and I'll e-mail it to
9 you --

10 THE TECH CONCIERGE: Okay.

11 MS. BERGMEYER: -- before I do.

12 BY MS. BERGMEYER:

13 Q Mr. Higgins, you were previously given an
14 exhibit that was the Farragut High School golf team's
15 Twitter account; is that correct?

16 A Yes.

17 Q And I believe you testified that Coach Tate
18 was a Farragut High School employee that might post to
19 that account; is that correct?

20 A Yes.

21 Q Does this tweet from September 27th of 2021
22 refresh your memory about the top four scores for the

1 Farragut High School boys' golf team?

2 A Yes.

3 Q And do you believe this record to be
4 accurate as to what their scores were?

5 A Yes.

6 Q What is par for a golf course?

7 A Seventy-two.

8 Q And so is it correct that player Owen
9 Queener shot three above par? It that how you
10 would've looked at it?

11 A Yes, he was three over par.

12 Q Okay. And the other two players shot six
13 over par; is that correct?

14 A Yes.

15 Q And the fourth player shot eight over par;
16 is that correct?

17 A Yes.

18 THE TECH CONCIERGE: Did you mean to do
19 that, Counsel?

20 MS. BERGMEYER: Do what?

21 THE TECH CONCIERGE: Have your e-mail
22 up?

1 Q And how often were you in the same gym with
2 L.E.?

3 A Two, three times a week.

4 Q But L.E. never spoke to you about the golf
5 team?

6 A No, ma'am.

7 Q And L.E. never tried out for the golf team
8 while you've been coach.

9 A No, ma'am.

10 MS. BERGMEYER: No further questions.
11 Thank you.

12 MS. JERNIGAN-JOHNSON: I don't have
13 anything.

14 MR. O'TOOLE: I just have a few
15 follow-ups.

16 EXAMINATION

17 BY MR. O'TOOLE:

18 Q Mr. Higgins, are mental toughness and
19 determination skills that a person of either gender
20 can have?

21 A Yes.

22 Q And you identified the returnees for the

CERTIFICATE OF DEPOSITION OFFICER

I, JANEL B. FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Janel B. Folsom

JANEL B. FOLSOM

Notary Public in and for the
Commonwealth of Virginia

CERTIFICATE OF TRANSCRIBER

I, ALICE AMUSIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script that reads "Alice Amusin". The signature is written in dark ink and is positioned above the printed name.

ALICE AMUSIN

Farragut High School Golf

Exhibit

0003

7/25/2022

Jon Higgins

Requirements

1. Players must have their own Clubs and Balls.
2. Players must have their own golf shoes
3. Players must have a sports Physical on file for the new season on file

Try Outs

1. Players must have a sports physical to try out.
2. Players trying out for the boys team will need to shoot an average score of 90 or better for 18 walking holes through three rounds
3. Players trying out for the girls team will need to shoot an average score of 100 or better for 18 walking holes through three rounds

Training Information for players on the team

1. Players will be able to run a mile in under 10 minutes
2. Players will do strength and agility workouts on their own or with the team at specific times

Competitions

1. The team is allowed per TSSAA rules to have 14 matches during the season including tournaments. At each match there will be 5 Boys and 3 Girls scheduled to play.

Team Policies

1. Players are expected to be at all practices unless you have permission from the coach to miss.
2. Players will compete in Qualifiers throughout the season to determine Post season Roster as well as Tournament Rosters for various tournaments throughout the year.
3. Players are expected to stay in good academic standing in school and be able to balance playing golf with school & family responsibilities.

